

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVE RICHARDSON,

Defendant and Appellant.

D053733

(Super. Ct. Nos. SCS208487
SCS205706)

APPEAL from a judgment of the Superior Court of San Diego County, Esteban Hernandez, Judge. Affirmed.

In 2006 in superior court case number SCS205706, Steve Richardson pleaded guilty to possession of cocaine (Health & Saf. Code, § 11350, subd. (a)) and was referred to a drug treatment program under Proposition 36. (Pen. Code, § 1210.)¹

In 2007 in superior court case number SCS208487, Richardson entered a negotiated guilty plea to possession of cocaine base for sale (Health & Saf. Code,

¹ Further statutory references are to the Penal Code unless otherwise specified.

§ 11351.5) and admitted he had a prior drug sales conviction within the meaning of Health & Safety Code section 11370.2, subdivision (a). In exchange for the plea, the prosecution agreed to a grant of probation, conditioned on Richardson serving 365 days in jail and waiving his credits under section 4019. The trial court sentenced Richardson in accordance with the plea bargain.

In 2008, Richardson admitted violating his probation and was sentenced to six years in state prison—the low term of three years for possession of cocaine for sale plus a three-year enhancement under Health & Safety Code section 11370.2, subdivision (a). The court awarded Richardson credit for the 350 days he had served in jail as a condition of his probation, but did not award him any section 4019 credits for superior court case number SCS208487.

Richardson appeals, contending the court erred by not awarding him section 4019 credits in superior court case number SCS208487.

FACTUAL AND PROCEDURAL BACKGROUND

On February 9, 2007, police searched Richardson's motel room in National City and found multiple pieces of rock cocaine, a razor blade, plastic baggies and what appeared to be a pay-owe ledger sheet. In a post-arrest interview, Richardson admitted he possessed the drugs for purposes of sale.

On March 29, Richardson pleaded guilty to possession of cocaine for sale and admitted his prior drug sales conviction. As part of the plea bargain, Richardson agreed to waive "all" of his section 4019 credits.

On April 26, the trial court sentenced Richardson to 365 days in jail and placed him on three years' probation. At that time, the court took a new waiver of the section 4019 credits from Richardson and noted the waiver applied to "past, present and future . . . credits."

Richardson did not obtain a certificate of probable cause.

DISCUSSION

Richardson contends that the court erred by denying him section 4019 credits because his earlier waiver of such credits could not properly apply to credits earned after he was sentenced. As Richardson puts it, he "could not waive future credits. He had not earned them, had no idea whether he would earn any of them and if he did earn any, how many."

However, Richardson is precluded from making this claim on appeal because he failed to obtain a certificate of probable cause. A defendant may not appeal from a judgment of conviction upon a plea of guilty unless he or she has filed a statement showing reasonable grounds for appeal and the trial court has executed and filed a certificate of probable cause. (§ 1237.5, subd. (b); *People v. Cuevas* (2008) 44 Cal.4th 374, 379; *People v. French* (2008) 43 Cal.4th 36, 43; *People v. Shelton* (2006) 37 Cal.4th 759, 766.) A certificate of probable cause is not required if the appeal is based upon grounds arising after entry of the plea that "do not challenge the validity of the plea." (*People v. Cuevas, supra*, 44 Cal.4th at p. 379.) The purpose of this procedural limitation is "to weed out frivolous and vexatious appeals from pleas of guilty or no contest, before

clerical and judicial resources are wasted." (*People v. Buttram* (2003) 30 Cal.4th 773, 790.)

In determining the applicability of section 1237.5 to a challenge of a sentence imposed after a guilty plea, "the crucial issue is what the defendant is challenging, not the time or manner in which the challenge is made." (*People v. Ribero* (1971) 4 Cal.3d 55, 63.) Thus, the "critical inquiry is whether a challenge to the sentence is *in substance* a challenge to the validity of the plea, thus rendering the appeal subject to the requirements of section 1237.5." (*People v. Buttram, supra*, 30 Cal.4th at p. 782.)

Richardson's waiver of his section 4019 credits was an integral part of the plea bargain he agreed to in case number SCS208487, where he faced a six-year prison term but instead received probation. Therefore, Richardson's challenge to the court's denial of section 4019 credits following his probation revocation is a challenge to the validity of the plea, which requires a certificate of probable cause.

In any event, there is no substantive merit to Richardson's claim that a waiver of future credits is invalid.

Section 2900.5 requires all time spent by a defendant in custody, and all work time and good time credits accrued under section 4019,² to be deducted from the defendant's term of imprisonment, including any term served as a condition of probation. (§ 2900.5,

² Section 4019 provides that when a prisoner is committed to a county jail, he or she is entitled to certain conduct credits for satisfactorily complying with the jail's reasonable rules and regulations and for not refusing to satisfactorily perform any labor assigned by the sheriff. Section 4019, subdivision (f) reads: "It is the intent of the Legislature that if all days are earned under this section, a term of six days will be deemed to have been served for every four days spent in actual custody."

subd. (a).) A defendant may waive these statutory requirements as a condition of probation or in exchange for other sentencing considerations. (*People v. Johnson* (2002) 28 Cal.4th 1050, 1054-1055; *People v. Eastman* (1993) 13 Cal.App.4th 668, 677-678; *People v. Johnson* (1978) 82 Cal.App.3d 183, 187-188.) In *People v. Burks* (1998) 66 Cal.App.4th 232, 236-237, a waiver of credits in return for a second probationary sentence was upheld.

Furthermore, Richardson's attempts to dispute the trial court's interpretation that his waiver of section 4019 credits applied to past, present and *future* credits, must fail. In *People v. Arnold* (2004) 33 Cal.4th 294, 307, our Supreme Court observed that a waiver of custody credits under section 2900.5 "is presumptively applicable to any future term of imprisonment." Our high court held: "A waiver of section 2900.5 custody credits *is* a waiver of such credits for all purposes. There is no basis for a probationer receiving the lenient benefit of reinstatement of probation to suspect that the scope of his or her *Johnson* waiver is anything less than a waiver and relinquishment of all statutory entitlement to custody credit under section 2900.5 in the fullest sense." (*Id.* at p. 309.) Accord, *People v. Jeffrey* (2004) 33 Cal.4th 312, 318-320 [waiver of future credits to be earned in residential drug treatment facility].) This is so even if the trial court fails to include an explicit advisement that future credits are included in the waiver. (*People v. Arnold, supra*, 33 Cal.4th at p. 309.)

Although *People v. Arnold, supra*, 33 Cal.4th 294 and *People v. Jeffrey, supra*, 33 Cal.4th 312 dealt with section 2900.5 credits, we conclude the reasoning in those cases also supports a conclusion that waivers of section 4019 conduct credits are waivers for all

purposes, including application of those credits toward any future prison term on revocation of probation.

DISPOSITION

The judgment is affirmed.

HALLER, Acting P. J.

WE CONCUR:

McDONALD, J.

McINTYRE, J.